No. 78-748

In the Supreme Court of the United States

OCTOBER TERM, 1978

P. J. CULLERTON, et al.,

Petitioners,

vs.

FULTON MARKET COLD STORAGE COMPANY,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

BRIEF FOR THE RESPONDENT IN OPPOSITION

JAMES L. FOX
DONALD P. COLLETON
One East Wacker Drive
Chicago, Illinois 60601
(312) 644-8500
Counsel for Respondent

Of Counsel
ABRAMSON & FOX
One East Wacker Drive
Chicago, Illinois 60601
(312) 644-8500

UNITED STATES LAW PRINTING CO., CHICAGO, ILLINOIS 60618 (312) 525-6581

TABLE OF CONTENTS

PAGE

Opinions below 1

Jurisdiction 2

Questions Presented 2

Statement of the Case 2

Argument 4

28 U.S.C. Section 1341 Presents No Bar To Respondent's Damage Suit 4

1. Damage suits fall outside Section 1341's prohibition 4

2. Respondent does not have a plain, speedy and efficient remedy in the Illinois courts 11

Conclusion 13

AUTHORITIES CITED

Cases

Bland v. McHann, 463 F.2d 21 (5th Cir. 1972), *cert. denied,* 410 U.S. 966 (1973) 6

Clarendon Associates v. Korzen, 56 Ill.2d 101 (1973) 12

Donahue v. Staunton, 471 F.2d 475 (7th Cir. 1972), *cert. denied,* 410 U.S. 955 (1973) 12-13

Educational Films Corp. v. Ward, 282 U.S. 379 (1930) 12

Eisen v. Eastman, 421 F.2d 560 (2d Cir. 1969) 10

Evangelical Catholic Communion, Inc. v. Thomas, 373 F.Supp. 1342 (D.Vt. 1973), *aff'd,* unpublished opinion, 493 F.2d 1397 (2d Cir. 1974) 7

PAGE

Garrett v. Bamford, 538 F.2d 63 (3rd Cir.), *cert. denied*, 429 U.S. 977 (1976) ... 5, 12

Goodyear Tire and Rubber Co. v. Tierney, 411 Ill. 421 (1952) ... 7

Great Lakes Dredge & Dock Co. v. Huffman, 319 U.S. 293 (1943) ... 5-6, 11

Hargrave v. McKinney, 413 F.2d 320 (5th Cir. 1969) ... 5

Hickman v. Wujick, 488 F.2d 875 (2nd Cir. 1973) ... 7

Holt v. Indiana Manufacturing Co., 176 U.S. 68 (1900) 11

In the Matter of the Application of Bernard Korzen, etc., for the Year 1971, (Misc. 72-38, no. 313) ... 9

In The Matter of the Application of the County Treasurer and ex-officio County Collector of Cook County, Illinois, for judgment, etc., for the Years 1968, et al. ... 9

In The Matter of the Application of the County Treasurer and ex-officio County Collector of Cook County, Illinois, for judgment, etc., for the Year 1977, (Misc. 78-23) ... 10

Iowa-DesMoines National Bank v. Bennett, 284 U.S. 239 (1931) ... 10

Kelly v. Springett, 527 F.2d 1090 (9th Cir. 1975) ... 7

Kerr v. City of Chicago, 424 F.2d 1134 (7th Cir.), *cert. denied*, 400 U.S. 833 (1970) ... 13

Lynch v. Household Finance Corp., 405 U.S. 538 (1972) 8, 11

Matthews v. Rogers, 284 U.S. 521 (1932) ... 6

Mitchum v. Foster, 407 U.S. 225 (1972) ... 8

Monroe v. Pape, 365 U.S. 167 (1961) ... 8, 12

People ex rel. Kohorst v. G.M.&O.R.R., 22 Ill.2d 104 (1961) ... 11

PAGE

Perez v. Ledesma, 401 U.S. 82 (1971) ... 6

Procter & Gamble v. Sherman, 2 F.2d 165 (S.D.N.Y. 1924) ... 12

Raymond v. Chicago Union Traction Co., 207 U.S. 20 (1907) ... 10

Sacks Brothers Loan Co., Inc. v. Cunningham, 578 F.2d 172 (7th Cir. 1978) ... 6

Silver v. Cormier, 529 F.2d 161 (10th Cir. 1976) ... 13

Sioux City Bridge Co. v. Dakota County, 260 U.S. 441 (1923) ... 10-11

Sunday Lake Iron Co. v. Wakefield, 247 U.S. 350 (1918) 10

Tramel v. Schrader, 505 F.2d 1310 (5th Cir. 1975) ... 5

U.S. and E. I. du Pont de Nemours and Company v. Livingston, 179 F.Supp. 9 (E.D.S.C. 1959), *aff'd per curiam*, 364 U.S. 281 (1960) ... 12

U. S. and Olin Mathieson Chemical Corp. v. Department of Revenue, 191 F.Supp. 723 (N.D. Ill. 1961), *rev'd on other grounds*, 368 U.S. 130 (1961) ... 12

Wynn v. Carey, (7th Cir. No. 78-1262, Aug. 17, 1978) ... 6

Zablocki v. Redhail, ... U.S. ...., 54 L.Ed.2d 618 (1978) ... 6

Other Authorities

28 U.S.C. § 1341 ... 3, 4, 5, 6, 8, 10, 11, 12, 13

42 U.S.C. § 1983 ... 2, 8, 11, 12, 13

120 Ill.Rev.Stat. § 675 ... 12

120 Ill.Rev.Stat. § 716 ... 12

Fourteenth Amendment, United States Constitution ... 2

Miss. Code, Section 11-51-77 ... 7

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-748

P. J. CULLERTON, et al.,

Petitioners,

vs.

FULTON MARKET COLD STORAGE COMPANY,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion (Pet. App. 1a-17a) of the Court of Appeals is reported at 582 F.2d 1071. The opinion (Pet. App. 19a-22a) of the district court is not officially reported.

JURISDICTION

The decision of the Court of Appeals was entered on August 7, 1978 and the petition was filed on November 6, 1978. The jurisdiction of the Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether 28 U.S.C. §1341 bars respondent/taxpayer's suit against petitioner assessment officials under 42 U.S.C. §1983 for tort damages resulting from their unconstitutionally discriminatory assessment practices.

STATEMENT OF THE CASE

This is an action by respondent, Fulton Market Cold Storage Company, a Cook County, Illinois taxpayer, seeking compensatory and punitive damages under 42 U.S.C. §1983 for injuries inflicted upon it by county and state* taxing officials. Respondent charges that these officials, individually and as parties to a continuing conspiracy, acted and combined under color of law to deprive it of its rights under the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution and under various other provisions of Illinois law.

Specifically, respondent alleges that from 1958 to 1973, petitioners have systematically, knowingly, intentionally, fraudulently and invidiously assessed its property at levels other than permitted by law and greatly in excess of the levels at which property in Cook County was generally assessed in those years. Respondent alleges that in 1968 and 1969 its property was deliberately assessed at two and

* Although only the county officials have petitioned this Court to issue a writ of certiorari, as used here the term "petitioner" includes both county and state officials.

one-half times the level at which property was generally assessed in Cook County in those years. Respondent's other allegations charge that petitioners' system of illegal valuations and discriminatory assessments has been widely, wilfully and purposefully practiced in Cook County and has worked substantial injury upon respondent (Pet. App. 23a-33a).

The petitioners fall into three groups: (1) the county assessor petitioners who, by statute, had the duty to assess real property in Cook County; (2) the County Board of Appeals petitioners who, by statute, had the duty to review and order corrected unlawful assessments brought before them on complaint; and (3) Directors of the Illinois Department of Revenue and the Illinois Department of Local Government Affairs (the State petitioners) who, by statute, had the duty to equalize the total assessed valuations of the several counties so that such total assessed valuations as equalized the full cash value of the property subject to assessment within the several counties and the duty to order a reassessment for any year in which they found that the assessments in any county were not in substantial compliance with the law (Pet. App. 23a-24a).

For relief, respondent's amended complaint prays for compensatory damages, including the sums it has expended in the years 1958 through 1974 in seeking redress from the acts of the petitioners plus the damage to its business resulting therefrom, and punitive damages (Pet. App. 33a).

The district court dismissed respondent's amended complaint relying on 28 U.S.C. §1341 (Pet. App. 22a). On appeal, the Court of Appeals reversed (Pet. App. 17a), holding that neither the language nor the statutory history of Section 1341 nor its underlying policy considerations bar respondent's Section 1983 suit for damages.

(All emphasis added unless otherwise stated)

ARGUMENT

28 U.S.C. §1341 PRESENTS NO BAR TO RESPONDENT'S DAMAGE SUIT

1. Damage actions fall outside Section 1341's prohibition.

The decision of the Court of Appeals presents no issue warranting this Court's review. Its analysis of the history and underlying policy considerations of Section 1341 [1] is sound. No compelling contrary authority has been presented. Finally, disturbing that decision would thwart the purpose of Section 1983 and invite continued and new abuse in matters of local taxation.

a.

Unarguably, the language of Section 1341 presents no bar to the present suit for this action does not seek to "enjoin, suspend or restrain the assessment, levy or collection of any tax" but rather is one for compensatory and punitive damages. The taxes in question have long since been assessed, levied and collected in full. Refunds have been sought and (except for 1969) obtained for all years in question. Only personal judgments against individual tortfeasors are claimed.

b.

It is equally certain that neither the legislative history of Section 1341 nor the cases construing this provision supply the bar to respondent's damage action suggested by petitioners.

[1] "The district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State."

As the decision below ably develops, the legislative history of Section 1341 shows congressional concern for two specific evils, both arising solely from the exercise of federal *injunctive* power:

> "First, the statute was directed at the elimination of unjust discrimination between citizens of the State and foreign corporations. It was feared that a foreign corporation, through diversity, could obtain a federal *injunction* prohibiting the collection of certain state taxes. Such a procedure, however, was unavailable to a State resident. . . . The second purpose of Section 1341 was also directed at foreign corporations. The primary concern was that foreign corporations, by obtaining a federal *injunction*, could seriously disrupt the state taxing process." Pet. App. 5a-6a.

See also *Garrett* v. *Bamford,* 538 F.2d 63, 66-67 (3rd Cir.), *cert. denied,* 429 U.S. 977 (1976); *Tramel* v. *Schrader,* 505 F.2d 1310, 1316 (5th Cir. 1975); *Hargrave* v. *McKinney,* 413 F.2d 320, 325-326 (5th Cir. 1969). Nowhere does Section 1341's legislative history suggest congressional objection to use of the federal courts by foreign or indeed local taxpayers for damage redress from unconstitutional tax practices.

Similarly, cases both construing Section 1341 and developing the policy considerations that led to its enactment nowhere exhibit antipathy toward federal court damage actions for persistent deprivation of a taxpayer's federal rights under color of law. Rather, their concern is for federal intervention likely to disrupt the state taxing process, deprive the public treasury of needed operating funds, or circumvent ordinary procedural requirements imposed by state law. And while these same concerns have extended Section 1341's bar to federal declaratory relief which, like injunctive relief, "may in every practical sense operate to suspend collection of the state taxes," *Great Lakes Dredge*

& Dock Co. v. *Huffman,* 319 U.S. 293, 299 (1943), this Court long ago recognized that these policy considerations would not require prohibition of a "suit at law in the federal courts [e.g. one for tort damages] if the essential elements of federal jurisdiction are present." *Matthews* v. *Rogers,* 284 U.S. 521, 526 (1932); (Pet. App.; 7a-8a). Manifestly, this distinction is well-founded in the present case at law in that respondent withholds nothing from the public treasury (having paid all taxes claimed including the unjust moiety), asks nothing from it, and poses no threat otherwise to proper fiscal administration. See *Sacks Brothers Loan Co., Inc.* v. *Cunningham,* 578 F.2d 172, 174-175 (7th Cir. 1978) (recognizing the propriety of tax damage suits in the federal courts).[2]

Petitioners' authorities are not inconsistent with this history and construction of Section 1341. *Bland* v. *McHann,* 463 F.2d 21 (5th Cir. 1972), *cert. denied,* 410 U.S. 966 (1973), was an injunction suit with an ancillary claim for refund of taxes alleged to have been discriminatorily levied

[2] If judgments for damages persuade tortfeasors to mend their ways and to honor constitutional guarantees, nothing in such a result would constitute the type of disruption found in Section 1341's policy concerns. *Cf. Zablocki* v. *Redhail,* .... U.S. ...., 54 L.Ed. 2d 618, 627 n. 5 (1978). *Wynn* v. *Carey,* (7th Cir. No. 78-1262, Aug. 17, 1978). (Slip Op. 12). As the court of appeals observed, departures from "established constitutional standards" (Pet. App. 12a) rather than state statutes or legitimate policies of local tax administration are at stake here. Similarly, that denial of federal jurisdiction may be proper in a case where the constitutional issues involved are likely to turn on questions of state law, *Perez* v. *Ledesma,* 401 U.S. 82, 128 n. 17 (1971), is also no basis for reversal here for in this case the "issue is not whether a state statute is constitutionally valid but rather whether an official's conduct violated" settled federal norms in the administration of admittedly valid state statutes. (Pet. App. 12a).

against Negroes in Edwards, Mississippi. Respondent here however asks neither an injunction nor a tax refund.[3] It seeks nothing from the taxing body. It would place no obstruction upon the proper functioning of the State's tax assessment, levy and collection procedures. Instead, it seeks only tort damages reasonably following from petitioners' unconstitutional acts plus a punitive damage award. Compensatory damages would include attorneys fees, appraisal expenses, business dislocation costs and interest lost on tax refunds obtained in the 1958-74 damage period in issue, none of which elements can even remotely be characterized as "refunds". See Pet. 11.

Likewise, *Hickman* v. *Wujick,* 488 F.2d 875 (2nd Cir. 1973), *Evangelical Catholic Communion, Inc.* v. *Thomas,* 373 F.Supp. 1342 (D. Vt. 1973), *aff'd,* unpublished opinion, 493 F.2d 1397 (2d Cir. 1974) and *Kelly* v. *Springett,* 527 F.2d 1090 (9th Cir. 1975) lend no aid to petitioners. *Hickmann* was an injunction, declaratory judgment and damage action against a local assessor. The court's brief *per curiam* decision gives no analysis whatever to the damage question but does note, significantly, the availability under New York law of declaratory judgment relief in state court which presumably could have forestalled infliction of many of the damage elements complained of in that case. Such declaratory relief is not available in the Illinois courts. *Goodyear Tire and Rubber Co.* v. *Tierney,* 411 Ill. 421 (1952). *Thomas* involved taxpayer religious entity's request that it be declared exempt from taxation under Vermont law. The taxpayer also sought a refund of taxes from the public treasury and damages of unspecified origin. The damage claim was denied because, unlike here (Pet. App. 12a), to reach it would have necessitated a declara-

[3] Significantly, unlike in Illinois, a Mississippi taxpayer need not pay the challenged portion of his tax as a precondition to state judicial review of it. Miss. Code, Section 11-51-77.

tory construction of the Vermont exemption law which might have been "more properly heard in the state courts". *Perez* v. *Ledesma, supra; Thomas,* 373 F. Supp. at 1344; *supra* n. 2. *Kelly* like *Bland* and unlike this case was a tax refund action.

Petitioners therefore err in describing this case as one involving a split in the circuits on the question of whether Section 1341 prohibits damage actions (Pet. 10).

C.

When the important objectives of the Civil Rights Act, 42 U.S.C. Section 1983, are taken into account, it is even more apparent that the Court of Appeals was correct in ordering the district court to assume jurisdiction over this action. "That Act guaranteed 'broad and sweeping . . . protection' to basic civil rights" including the "(a)cquisition, enjoyment and alienation of property." *Lynch* v. *Household Finance Corp.,* 405 U.S. 538, 543-544 (1972). Its enactment was powerfully stimulated by the legislators' realization that without a federal tort remedy the "failure of certain States to enforce the laws with an equal hand" would go uncorrected, "(i)mmunity" would be "given to crime", and constitutional safeguards would be lost. *Monroe* v. *Pape,* 365 U.S. 167, 174 (1961). The Act's purpose, therefore, was "to interpose the federal courts between the States and the people, as guardians of the people's federal rights." *Mitchum* v. *Foster,* 407 U.S. 225, 242 (1972).

The instant case literally cries out for the protection of the federal courts contemplated by Section 1983:

Each and every year since 1968, the Assessor petitioners have, under color of law, blatantly discriminated against respondent by seeking to collect taxes from it on the basis of assessed valuations greatly in excess of levels permitted by law (Pet. App. 26a).

Each and every year since 1968, the Assessor petitioners, notified by respondent of their discrimination, have under color of law, refused to correct these assessments (Pet. App. 28a).

Each and every year since 1968 (except 1969), the County Board of Appeals petitioners, notified by respondent of the Assessor petitioners' discrimination, have, under color of law, refused to correct it (Pet. App. 29a-31a).

Each and every year since 1968, the State petitioners, notified of the extreme discrimination extant in Cook County have, under color of law, refused to correct the violation (Pet. App. 31a-33a).

Each and every year since 1968, the courts have declared respondent's assessments to be fraudulent finding, typically, "an intentional, willful and systematic discrimination" against respondent,[4] and during those years have awarded tax refunds as high as $55,000.[5]

Remarkably, this pernicious pattern against respondent has continued even during the pendency of this suit, and

[4] *In the Matter of the Application of Bernard Korzen, etc., for the Year 1971,* (Misc. 72-38, no. 313), order dated Feb. 27, 1974, p. 5.

[5] See *In The Matter of the Application of the County Treasurer and ex-officio County Collector of Cook County, Illinois, for judgment, etc., for the Years 1968* (Misc. 70-02, No. 183), *1969* (Misc. No. 61), *1970* (Misc. 72-01, No. 251), *1971* (Misc. 72-38, No. 313), *1972* (Misc. 73-27, No. 553), *1973* (Misc. 74-25, No. 611), *1974* (Misc. 75-36, No. 699), *1975* (Misc. 76-30, No. 456), *1976* (Misc. 77-34, No. 580) and *1977* (Misc. 78-23, objection number not yet assigned) (Circuit Court of Cook County, Illinois, County Department, County Division).

even after the decision of the court of appeals. *In the Matter of the Application of the County Treasurer and Ex-Officio County Collector of Cook County, Illinois, for Judgment, etc., for the Year 1977*, (Misc. 78-23, objection number not yet assigned).

Throughout petitioners' ten years of oppression, respondent has incurred substantial attorneys' fees appearing each year before each of the two administrative bodies and thereafter, each year, in suits for refunds in the Circuit Court of Cook County, lost tens of thousands of dollars interest on the fraudulent moiety of taxes paid in full under protest, suffered consequent business dislocation, and expended substantial sums on property appraisals to demonstrate petitioners' discrimination. It is for these damages, uncompensable under state law, respondent seeks compensation plus smart money to deter petitioners' further violation of "established constitutional standards" (Pet. App. 12a, 33a). Affording redress for injuries such as these "is precisely the purpose of Section 1983 suits," (Pet. App. 12a); see also *Eisen* v. *Eastman*, 421 F.2d 560, 562-563 (2d Cir. 1969) (Friendly, J.). Hence, to hold that Section 1341 bars the present damage action would not only frustrate the intended purpose of the Civil Rights Act, but would leave respondent (and countless other taxpayers) without a judicial remedy for continued and new unconstitutional deprivation by petitioners. For these added reasons then, Section 1341 should not be construed to prohibit the present suit.[6]

[6] Respondent's amended complaint plainly alleges *intentional* tax discrimination (Pet. App. 26a-32a) constituting denial of equal protection within *Raymond* v. *Chicago Union Traction Co.*, 207 U.S. 20 (1907); *Sunday Lake Iron Co.* v. *Wakefield*, 247 U.S. 350 (1918); *Iowa-DesMoines National Bank* v. *Bennett*, 284 U.S. 239 (1931); and *Sioux City Bridge Co.* v. *Dakota County*, 260 U.S. 441 (1923). Since, if not before, *Lynch* v. *Household Finance Corp.*, 405 U.S. 538 (1972), such discrimination has been cognizable under Section 1983 even though it impinges upon proprietary rights as distinguished from personal liberties such as those related to race, politics and national origin. Petitioners' suggestions to the contrary (Pet. 7, 15-19, 20-21) are therefore without merit. *Great Lakes Dredge & Dock Co.* v. *Huffman*, 319 U.S. 293 (1943) was a declaratory judgment action and in no way considered Section 1341 in relation to a request for compensatory damages. *Holt* v. *Indiana Manufacturing Co.*, 176 U.S. 68 (1900) involved dismissal of an injunction complaint for want of the requisite jurisdictional amount. To the extent *Holt* contained dicta indicating Section 1983 protects only "civil rights", it has long since been superseded by *Lynch*.

This is not to say that the standard of proof respondent must satisfy to recover damages is such that the lawful vigor of state tax administration will be lessened. On the contrary, the Court of Appeals, following this Court's recent decisions, makes clear that tax officials will not be lightly exposed to Section 1983 liability and that under the requisite measure of proof conscientious law-abiding officials have nothing to fear (Pet. App. 15a-16a).

2. Respondent does not have a plain, speedy and efficient remedy in the Illinois courts.

Even if Section 1341 were thought to be applicable to damage actions, it would present no jurisdictional bar here because there is no "plain, speedy and efficient remedy" under Illinois law to correct the injuries of which respondent complains.[7] While the Illinois Revenue Act of 1939

[7] Doubt must remain as to whether the statutory procedure for tax relief can ever be deemed "speedy and efficient" for purposes of §1341 so long as the Illinois Supreme Court holds to its authoritative statement that the procedure is "cumbersome and ponderous". *People ex rel. Kohorst* v. *G.M.&O.R.R.*, 22 Ill.2d 104, 109 (1961).

establishes procedures for obtaining a refund of unconstitutionally excessive taxes, i.e., 120 Ill.Rev.Stat. §§675 and 716, no statutory or common law remedy has ever been recognized in Illinois whereby a taxpayer may obtain compensatory damages for injuries resulting from systematic, malicious tax fraud. The statutory remedy makes no allowance for, and Illinois courts have uniformly denied, payment of interest on refunds of fraudulently excessive taxes paid in full under protest. *Lakefront Realty Corp.* v. *Lorenz, supra; Clarendon Associates* v. *Korzen*, 56 Ill.2d 101 (1973); (Pet. App. 17a). Illinois law does not redress the enormous costs and business dislocation attendant upon obtaining the limited relief afforded under the Revenue Act. Property appraisal expenses incurred in establishing a right to a refund under the Revenue Act are not costs which a successful taxpayer may recover. Nor does local law allow punitive or smart money or attorneys' fees which Fulton has a right to demonstrate are warranted in the present case. Such deficiencies establish beyond dispute the inadequacy and incompleteness of the state remedy, (Pet. App. 17a); see also *U.S. and E. I. du Pont de Nemours and Company* v. *Livingston*, 179 F. Supp. 9, 13, 15 (E.D.S.C. 1959), *aff'd. per curiam*, 364 U.S. 281 (1960); *Educational Films Corp.* v. *Ward*, 282 U.S. 379, 386, n. 2 (1930); *Procter & Gamble* v. *Sherman*, 2 F.2d 165, 166 (S.D.N.Y. 1924); *U. S. and Olin Mathieson Chemical Corp.* v. *Department of Revenue*, 191 F.Supp. 723, 726-727 (N.D. Ill. 1961), *rev'd. on other grounds*, 368 U.S. 130 (1961); *cf. Garrett* v. *Bamford, supra*, 538 F.2d at 66-67, and hence that Section 1341 does not bar respondent's right under Section 1983 to such of these elements of money damages it shows are "the natural consequences" of the petitioners' discrimination. *Monroe* v. *Pape, supra*, 365 U.S. at 187; see also *Donahue* v. *Staunton*, 471 F.2d 475,

482-483 (7th Cir. 1972), *cert. denied*, 410 U.S. 955 (1973); *Silver* v. *Cormier*, 529 F.2d 161, 163-164 (10th Cir. 1976); *Kerr* v. *City of Chicago*, 424 F.2d 1134, 1141 (7th Cir.), *cert. denied*, 400 U.S. 833 (1970).

CONCLUSION

While this is not an ordinary case, it is exactly what Section 1983 is all about for it has become certain that only a federal cause of action heard in a federal court will thwart petitioners' malicious abuse of the taxing power under color of law. The Court of Appeals was correct in holding that petitioners are liable in damages for intentional violations of respondent's constitutional rights and that nothing in Section 1341 prevents a federal court from awarding such damages. Hence the petition for a writ of certiorari should be denied.

Respectfully submitted,

JAMES L. FOX
DONALD P. COLLETON
Counsel for Petitioner

Of Counsel:
ABRAMSON & FOX
One East Wacker Drive
Chicago, Illinois 60601
(312) 644-8500